

**Explanation of Significant Differences
to the
Record of Decision**

**South Bay Asbestos Superfund Site
Operable Unit 2 - Overall Site**

**Alviso District
San Jose, California**

September 28, 2011

**United States Environmental Protection Agency
Region 9-San Francisco, California**

This page left blank intentionally

EXPLANATION OF SIGNIFICANT DIFFERENCES

SITE NAME AND LOCATION

South Bay Asbestos Superfund Site
Overall Site Operable Unit 2
Alviso District, San Jose, California

INTRODUCTION AND PURPOSE

This decision document presents this Explanation of Significant Differences (“ESD”) to the remedial action selected by the United States Environmental Protection Agency (“EPA”) for the Overall Site Operable Unit 2 (“Overall Site OU2”) at the South Bay Asbestos Superfund Site in San Jose, California. The Overall Site OU2 remedy was selected by EPA in a Record of Decision dated September 29, 1989 (ROD/R09/89/044). A separate ROD was completed in June 1991 for the Ring Levee Operable Unit 1 (“Ring Levee OU1”) (ROD/R09/91/061) (amending R09-88-026), and is not impacted by this ESD.

EPA is the lead agency for the South Bay Asbestos Superfund Site. The supporting state agency is the California Department of Toxic Substances Control. The modification of the remedy for the Overall Site OU2 is set out in this ESD.

This ESD was developed in accordance with the applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 *et. seq.*, as amended) (“CERCLA”) and the National Contingency Plan (40 C.F.R. Section 300 *et seq.*). This ESD is based on the administrative record for both OUs and is issued under the authority established in Section 117 (c) of CERCLA, 42 U.S.C. § 9617(c). This ESD and supporting documents (Appendix A) will become part of the administrative record for the South Bay Asbestos Superfund Site. The Administrative Record for the Site is available for public inspection and review pursuant to NCP Section 300.825(a)(2) and will be available at the following locations:

EPA Region 9 Superfund Records Center
75 Hawthorne Street
San Francisco, CA 94105 • (415) 820-4700

The Record Center’s hours are 8:00 am to 5:00 pm, Monday through Friday.

San Jose Public Library-Alviso Branch
5050 North First Street
Alviso, CA 95002 • (408) 263-3626

The Alviso Library’s hours are Mon (2pm-7pm), Tues-Wed (11am-8pm), and Thurs-Sat (10am-6pm).

SITE BACKGROUND

The South Bay Asbestos Superfund Site (SBA Site or Site) is located in the Alviso district of San Jose, California, at the southern edge of San Francisco Bay (Figure 1). The SBA Site encompasses the entire 550-acre area of the Town of Alviso where over 2,100 people live. The SBA Site was listed on the National Priorities List ("NPL") on June 10, 1986. EPA has been the lead agency for Superfund activities at the SBA Site since 1986 when the lead-agency role was transferred from the state to EPA.

The remedial objective for the SBA Site is to control the release of asbestos fibers into the air from asbestos-contaminated soils and other asbestos-containing material. In order to achieve this objective, the SBA Site was divided into two operable units ("OUs"). The first OU included the removal of what was known as the "ring levee", which was constructed by the City of San Jose in 1983 after Alviso flooded. The material used to construct the levee contained serpentine, an asbestos-containing rock. EPA signed a Record of Decision ("ROD") in 1988 addressing asbestos contamination in the Ring Levee OU1 and amended that ROD in June 1991. The second OU addressed the Overall Site, which concerns asbestos contamination attributable to sources other than the Ring Levee including truck yards, landfills and street dust in the community of Alviso. The ROD for the Overall Site OU2 was signed in September 1989.

Since there were no health-based standards available for asbestos in soils at the time of the 1989 ROD, EPA used a quantitative risk characterization instead of Applicable or Relevant and Appropriate Requirements (ARARs) to determine cleanup goals for the Site. The quantitative studies, including extensive ambient air sampling, found that the most significant risk to human health came through the inhalation pathway for asbestos that may result from soil disturbance. Based on the detection limit for asbestos at that time, EPA established the remediation goal of less than one percent asbestos in soil.

Because the ring levee contained the highest levels of asbestos within the SBA Site (as much as 40 percent) and covered the most area (almost two-miles long), it posed the most serious threat to public health. The original Ring Levee OU1 ROD in September, 1988 selected a remedy which would have required capping the levee in place. However, the Alviso community preferred that the entire ring levee be removed. Consequently, an OU1 ROD Amendment in June 1991 selected a remedy with the following components: 1) removal of the entire asbestos contaminated ring levee following completion of the Coyote Creek Flood Control Project, 2) off-site disposal of the levee material in compliance with state and federal requirements, 3) restoration of the previously existing wetlands underlying the levee as well as mitigation for lost wetland values, 4) implementation of dust control measures prior to and during levee removal, and 5) asbestos air monitoring and confirmation asbestos soil sampling. An ESD relating to the Ring Levee OU was issued in 1993 allowing: 1) Removal of the ring levee prior to the completion of Coyote Creek Flood Control Project, 2) Construction of a temporary replacement levee with clean soil material, and 3) Removal of the temporary levee following completion of the flood control project. The total removal of the asbestos-containing flood control ring levee was completed in 1994 and removal of the temporary

levee was completed in 1997. Since there was no asbestos contamination left in place, there is no requirement for conducting Five-Year Reviews for the Ring Levee operable unit in the future.

DESCRIPTION OF THE SELECTED REMEDY IN THE OU2 ROD

The Overall Site OU2 ROD selected a remedy that required the following measures: 1) paving asbestos contaminated truck and industrial yards; 2) wet sweeping of Alviso streets on a monthly basis; 3) locating and removing obvious asbestos sources such as pipes, and disposing of them in an off-site landfill; 4) placing deed restrictions on landfills after verifying the adequacy of cover material pursuant to NESHAPs for asbestos; 5) establishing institutional controls to ensure maintenance of remediation measures. The following briefly summarizes the status of each of these remedial actions and the circumstances that prompted and support the need for the modifications to the selected remedy described in this ESD.

Truck Yards

The OU2 ROD required the paving of asbestos-contaminated truck yards in Alviso. In accordance with unilateral orders issued by EPA in 1991, four truck yard areas north of State Street (Figure 1) were required to pave their property since they had greater than one percent asbestos in the soil and significant vehicular traffic. The paving was completed by 1992 at the four truck yards using either asphalt, concrete or chip seal pavement. By November 2004, all four had excavated the contaminated soil and disposed of it off-site, thus removing any potential exposure from those properties. On the basis of the results of confirmation soil sampling, EPA concluded that the asbestos contamination was effectively removed from these properties, the remediation was completed and no further action was required.

Wet Street Sweeping

The OU2 ROD requires monthly wet sweeping of Alviso streets. During the Remedial Investigation (1986-1988), asbestos was detected in trace amounts and above the one percent action level in the samples of surface street dust. Conventional street sweeping was therefore abandoned in Alviso due to the presence of asbestos. It was believed that this asbestos in the street dust was being transported from the asbestos contaminated soil material in unpaved roads, the ring levee, and unpaved truck yards with significant vehicular traffic. By 1989, a considerable amount of dust had accumulated in the gutters of the streets.

The City of San Jose has routinely conducted wet sweeping of Alviso streets on a monthly basis since the 1989 ROD was issued. This activity is now part of a permanent City-wide street cleaning program in San Jose. This has been an effective method of removing debris and dust that had accumulated in the streets while emitting a minimal amount of dust during the sweeping operation. By 1994, all major sources of asbestos

that required remediation within the SBA Site had been addressed including the ring levee, the truck yards and landfill areas.

In August 2007, EPA conducted additional asbestos sampling to address whether or not cleanup actions (previously based on one percent or less asbestos in soil) were sufficiently protective for the SBA site. This issue was identified during the Five-Year Review conducted in 2005. Air samples were taken in the breathing zone of EPA technicians while simulating soil-disturbing activities that might cause exposure to asbestos fibers like driving a vehicle, riding a bike, or running on a field. This is called “activity-based sampling” (“ABS”) and is considered a more representative method of measuring personal exposure to airborne asbestos.

EPA conducted the ABS air sampling at several different locations at the SBA Site to evaluate if there is any potential for significant exposure to asbestos in Alviso during normal dust-generating activities. All-terrain vehicle (“ATV”) riding was used as a surrogate for driving or riding in a vehicle and for riding a bicycle on the residential streets in town. During this exposure assessment, EPA personnel simulating these activities on the ATVs wore personal air samplers to collect dust from the breathing zone. Roadside ambient air sampling was also used as a surrogate for exposure to road dust while walking next to streets in town. Stationary air samplers were also set up to collect nearby asbestos samples outside the area of activity. Soil samples were also collected and analyzed in order to determine the concentration of asbestos in representative community soils.

A total of 83 ABS air samples were collected throughout the SBA Site including 34 samples which were collected in the residential streets of Alviso. Of these samples, 24 were non-detect and the remaining 10 samples had very low concentrations of detectable amounts of asbestos fibers. A total of 20 soil samples collected from residential street dust throughout Alviso were also analyzed for asbestos. All of these test results were non-detect for asbestos in street soil dust at the analytical sensitivity of 0.25 percent. Based on the results of this asbestos exposure assessment, EPA concluded that asbestos exposures from typical dust generating activities in the Alviso community (including vehicular traffic on the streets) are below risk-based levels of concern. No further evaluation or remedial action is recommended. The results of this study confirmed that asbestos had been effectively eliminated as a contaminant of concern in the street dust because the major sources of asbestos exposure are being controlled (landfill covers) or have been removed (truck yards and ring levee), therefore; wet sweeping of Alviso streets is no longer required as a part of the remedy in the OU2 ROD.

Asbestos Debris Removal

EPA conducted several removal operations during the 1980s after locating asbestos contaminated debris and piping including at the Environmental Education Center, within the San Francisco Wildlife Refuge. No other obvious above-ground sources of asbestos waste debris or piping have been identified.

Landfill Deed Restrictions and Maintenance of Remedial Measures

Three former landfills within the SBA Site (Santos, Marshland, and Sainte Claire Landfills-Figure1) were thought to have received asbestos waste from an asbestos-cement pipe manufacturing plant from 1953 until 1982. The OU2 ROD requires placing of deed restrictions on these former landfills after verifying that the three landfill areas met the asbestos control requirements for cover material thickness. The landfill cover requirements under the Clean Air Act's National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") call for two feet of non-vegetated soil cover or six inches of vegetated soil cover where it is known that asbestos waste has been buried. Other suitable cover material such as concrete, asphalt or other paving material would also meet these requirements. Based on EPA's review of asbestos sampling results and landfill closure plans it determined that the soil covers at the Santos, Marshland, and Sainte Claire Landfills were acceptable and that the landfills were in compliance with NESHAPs cover requirements. Therefore, under the OU2 ROD, the only remedial action required for the landfill areas were deed restrictions to ensure that the cover is inspected and maintained by present and future owners and operators.

EPA has been working with the California Department of Toxic Substances Control ("DTSC") to assure that deed restrictions are properly placed on the required landfill properties. The deed restriction, now known as a Land Use Covenant ("LUC") - Environmental Restriction – is administered by the California DTSC and must be recorded with the Santa Clara County Recorder's Office. The three landfill areas discussed in the OU2 ROD are the Santos, Marshland and Sainte Claire landfills. The ROD requires placement of deed restrictions as institutional controls on these former landfills to protect the integrity of the landfill caps. Less than a year after selection of the 1989 ROD remedy, new California State Integrated Waste Management Board land use regulations were promulgated under Title 27, Landfill Closure Regulations, which govern post-closure activities at former landfills. These Closure Regulations are currently being implemented at all three site landfills by the San Jose Local Enforcement Agency ("LEA") This includes quarterly inspections of each of the Site landfills to ensure compliance with the applicable Title 27 standards. The Second Five-Year Review Report in 2005 identified the Title 27 Landfill Closure Regulations as a potential ARAR to be considered when implementing the selected remedy in the OU2 ROD to require deed restrictions.

Bixby Technology Center portion of the former Santos Landfill

The Santos Landfill, which has been an inactive waste disposal site since the early 1960s, has two separately owned parcels. One deed restriction was placed in 2004 on the portion of the Santos Landfill owned by Legacy Partners, where a commercial office development known as Legacy Tech Park was built in 1998. Legacy Tech Park was built under a prospective purchaser agreement ("PPA") with EPA. Extensive asbestos control methods were required during construction under a Soil Management Plan ("SMP"). Under the SMP, soil wetting, dust suppression and asbestos air monitoring were conducted. Asbestos piping that was excavated was segregated and disposed at an

approved asbestos landfill site. The PPA required that a new cap be constructed, maintained, and inspected annually. The cap consists of concrete slab floors and 60-millimeter thick high density polyethylene liners beneath the five buildings; asphalt and concrete pavement beneath the exterior parking areas and walkways; and 18 inches of imported topsoil beneath landscaped areas. This property is now occupied by new owners and is known as the Bixby Technology Center (Figure 1).

The SMP for the Bixby Technology Center/Santos Landfill require a five-year cap inspection to be conducted and report to be provided to EPA. Review of the Five-Year Cap Inspection Report (SCS Engineers, 2010) indicated that Bixby Technology Center cap is well maintained and the inspection description in the Report stated that no major cracks, holes or degradation were observed in the building base exteriors, paved areas or landscaped areas. EPA confirmed these findings during recent Site inspections conducted in May 2010 for a Five-Year Review.

The Summerset Mobile Estates (“SME”) portion of former Santos Landfill property had the OU2 ROD-required deed restriction recorded on its title in September 2011. It is currently owned by the Santos/Alviso Partnership, L.P.. This property was developed into the SME trailer home park in the mid 1970s and consists of 112 mobile homes. The foundation for each of the mobile homes is several feet above grade on metal and concrete supports placed on top of the soil cap. Almost all of the crawlspaces under the homes are enclosed with removable skirting made of either wood or plastic foam. All of the home lots have paved driveways and landscaped yards. All of the roadways in the SME are paved and well maintained with no significant cracks or wear showing on the surface.

To ensure that there were no public health risks to the residents of the mobile homes living on the Santos Landfill, EPA required the owner to conduct a site investigation on the SME property for asbestos and other soil contaminants in the mid-1990s. Test results for asbestos, which were primarily non-detect and below the one percent action level, confirmed that the soil cover at SME met the requirement for two feet of clean cover material. The results for all other contaminant levels were below health-based criteria.

With the deed restriction having been placed on the SME portion of the Santos Landfill, the only remedial action required for this property under the OU2 ROD has been completed. This will ensure that the cover is inspected and maintained by current and future owners and operators. As part of the deed restriction, a cap inspection is required to be conducted and a report to be provided to EPA every 30 months.

The Marshland Landfill, also known as the Highway 237 Landfill, has not had a DTSC LUC recorded in its chain of title, however, this capped landfill does have a deed notice recorded in its chain of title and is regulated by the following two State agencies: as a Class III landfill by the California Regional Water Quality Control Board, San Francisco Bay Region (“Water Board”), and Title 27 Landfill Closure Regulations by the California State Integrated Waste Management Board (“CIWMB”). EPA determined in

the Third Five-Year Review Report (EPA, 2010) that an ESD to the ROD should be used to clarify that no further controls are needed at the Marshland Landfill and that existing state requirements meet the deed restriction requirements in the ROD.

California's Closure Regulations, which are governmental controls rather than proprietary, meet the same objectives as implementation of a proprietary deed restriction, thus they suffice as an appropriate substitute for a deed restriction at the Site. The Closure Regulations, promulgated by the CIWMB, regulate the closure, post-closure and reuse of disposal sites in California. The Closure Regulations are then implemented by Local Enforcement Agencies ("LEAs"), in this case the City of San Jose LEA.

EPA has determined that the following governmental controls provided through Title 14 and Title 27 regulations ("Closure Regulations"), which are being implemented by the City of San Jose LEA, are as protective of the cap as the proprietary control that would be met through deed restrictions:

- Title 14 CCR § 18083, which requires the LEA to inspect closed landfills quarterly until no potential threat exists to public health and safety or the environment.
- Title 27 CCR §§ 21100 *et seq.* which are triggered when new post-closure activities take place at a closed landfill site that may jeopardize the integrity of the previously closed disposal site or pose a potential threat to public health and safety or the environment.
- Title 27 CCR § 21100, which requires that all construction at LEA-regulated closed landfill sites be designed and maintained in a manner that protects public health and prevents public contact with the waste.
- Title 27 CCR § 21190 which requires that all post-closure land uses at former landfills must be designed and maintained to protect public health and safety and must maintain cap integrity. The LEA has review and approval authority over all structures on top of the waste and within 1,000 feet of the disposal area.
- Title 27 CCR § 21200 which requires landfill owners to notify prospective owners of the applicable standards, conditions of closure and compliance agreements and to notify the LEA within 30 days of any property transfer.
- Title 27 CCR § 21170 which requires landfill owners to file a detailed description of the site (including a map, boundaries of fill area, closure date, location of closure and post-closure plans, and a statement indicating how future site use is restricted) with the County Recorder and the LEA.

The Closure Regulations apply directly to those disposal areas closed after November 1990. The present owner of the Marshland Landfill, Legacy Partners, entered into a PPA in 2000 with EPA when they purchased this property and planned to develop a commercial office complex on the Site. The PPA required that extensive asbestos control measures be implemented during construction under an SMP including soil wetting, dust suppression and asbestos ambient air monitoring. The PPA also required approval by the

Water Board of the Highway 237 Landfill/Post-Closure Land Use Report (2000) and development plan prior to the start of construction. A final report was approved by the Water Board in September 2000 which required over four feet of soil cover. This greatly exceeds the minimum NESHAPs minimum cover requirements for asbestos waste. The landfill closure activities, including excavation and onsite relocation of landfill materials and construction of the final landfill site cap, were completed in March 2002. Certification of the landfill closure work was approved by the Water Board in September 2002. For more information on the Marshland Landfill closure activities, see the Second Five-Year Review report (EPA, 2005). Although the landfill was closed in 2002 in preparation for a new commercial development, construction did not occur until 2007 due to the economic downturn in Silicon Valley.

The Marshland Landfill is presently known as the America Center and has been developed by the owner, Legacy Partners, with the construction of two office buildings. Construction of the buildings began in December, 2007 and was completed in 2010. The asbestos control measures required under the SMP described above were also implemented during construction when the cap was excavated or breached for installation of building support pilings and utility trenches. The Water Board, the LEA and EPA provided oversight during the project. Legacy Partners is managing the redevelopment of this former landfill, although the site currently remains vacant. The minimum four-foot thick soil cover is well maintained and shows no signs of any significant cracking or erosion of the slopes, which are vegetated with grasses.

The Title 27 regulations at CCR § 21170 requires landfill owners to file a deed notice which describes the landfill area, the closure plan, and environmental restrictions on the property for future site use. A deed notice was recorded in the chain of title of the former Marshland Landfill in September 2007. This satisfied the Title 27 regulations for closed disposal sites and the OU2 ROD institutional control requirement to provide long-term controls to ensure the integrity of the cap and protection of human health; therefore, a deed restriction (i.e. LUC) is not necessary.

The SMP also requires a five-year cap inspection to be conducted and a report to be provided by the property owner to EPA. Review of the first two Five-Year Update Reports (Crawford Consulting Inc. 2005 and 2010) indicates that the site cap is well maintained with no signs that the integrity of the cap is compromised. EPA also conducted visual inspections of the Marshland Landfill as part of the Five-Year Review Reports prepared in 2005 and 2010. Both of these inspections confirmed that no erosion or damage to the cover was observed and that no repairs to the cap were necessary.

The Sainte Claire Landfill has not had the ROD-required deed restriction placed on its title, but through this ESD EPA is determining that no such deed restriction is required. This property consists of two lots: (1) a lot on the west side of Gold Street, which is vacant and has a surface paved mostly with asphalt, and (2) a lot on the east side of Gold Street, which is used for storage of old cars, trucks, trailers, and carts. The cover consists of solid compacted soil and gravel with no significant holes or cracks on the surface. The owner of this property has questioned the need for a deed restriction since the landfill

material below the cap had not been extensively sampled to provide definitive evidence for the presence of buried asbestos waste. Based on this assertion, the property owner conducted additional asbestos soil sampling below the two foot soil cover in 2004. A total of eight samples were collected between two and five feet below the ground surface. The analytical sampling results were all below the one percent action level for asbestos in soil, however, the number, depth and location of the samples were insufficient to determine whether or not asbestos waste had been buried on this property. EPA coordinated its review of this sampling effort with the California DTSC. In 2011, the owner of the Sainte Claire landfill performed additional sampling work under EPA oversight to further characterize the two parcels. A total of 28 additional soil samples were collected as deep as ten feet below ground surface and tested for asbestos. The sampling program and test results were provided in the Asbestos Sampling Report for Sainte Claire Landfill, April 2011. Of the 28 samples analyzed, only one sample was over the one percent concentration action level established by the EPA for the South Bay Asbestos Area. All of the other concentrations were less than 0.25 percent or non-detect, which is substantially less than the one percent action level established by the EPA. These results are sufficient to demonstrate to EPA and DTSC that the former Sainte Claire Landfill does not need a deed restriction.

Five Year Reviews

The remedies implemented under the OU2 ROD provide permanent solutions to meet the remedial objectives. However, since asbestos will remain buried on-site at the Santos and Marshland Landfills, a review is necessary every five years to ensure that human health and the environment continue to be protected. The first three reviews were conducted in the years 2000, 2005, and 2010. EPA found that cleanup actions at the SBA Site are currently protective of human health and the environment because the major sources of asbestos exposure are being controlled (via landfill covers) or have been removed (via truck yards and ring levee). The next five-year review will be conducted by September 2015.

SUMMARY OF SIGNIFICANT DIFFERENCES

As a result of this ESD, the components of the remedy for the Overall Site OU2 ROD are modified in two ways. First, this ESD modifies the remedy so that wet sweeping of Alviso streets is no longer required as a means to control asbestos in street dust. Secondly, this ESD modifies the remedy so that placement of deed restrictions is no longer required for the Marshland or Sainte Claire Landfills.

Scope, Performance and Cost of the Remedy

This ESD does not significantly alter the scope, performance or cost of the remedy. The remediation goals have not been changed. Based on the additional asbestos soil and air sampling analytical results (which were non-detect or below cleanup action levels) the scope of the remedy (i.e. area of response) is slightly decreased since remediation is no

longer necessary with respect to wet street sweeping or placement of a deed restriction on the Sainte Claire Landfill. At the Marshland Landfill, institutional controls administered by the state of California meet the deed restriction requirements in the OU2 ROD; therefore, the area of response is the same. Performance of the remedy, including the long-term reliability, has not been changed. The cost of the remedy has been slightly reduced in the long-term since oversight of wet street sweeping and the institutional controls on the Sainte Claire Landfill are no longer required. Five-Year Reviews will still be required for the Marshland Landfill in the long-term. Unless supplemental investigations indicate that there is unexpected future response work to be conducted, EPA does not anticipate that there will be any future work or costs incurred at the South Bay Asbestos Site.

Wet Sweeping of Alviso Streets

This ESD eliminates the OU2 ROD requirement for monthly wet sweeping of Alviso streets. The implementation of wet street sweeping to control asbestos dust emissions is not needed since there are no remaining uncovered sources of asbestos in Alviso and additional asbestos air and soil sampling test results show there is no longer actionable levels of asbestos in street dust that would require this remedial action to be continued.

Landfill Deed Restrictions

Marshland Landfill

This ESD eliminates the OU2 ROD requirement for placement of a deed restriction on Marshland Landfill because the existing state regulations provide adequate long-term controls to ensure the integrity of the cap that meet the deed restriction requirement in the OU2 ROD. The Marshland Landfill, also known as the Highway 237 Landfill, is regulated by the following two State agencies: as a Class III landfill by the California Regional Water Quality Control Board, San Francisco Bay Region ("Water Board") and Title 27 Landfill Closure Regulations by the California State Integrated Waste Management Board ("CIWMB").

The state's Landfill Closure Regulations meet the three purposes for which a deed restriction was required on landfills at the Site by the OU2 ROD: protection of the cap, maintenance of the cap, and a notice provision to future owners and operators. For its part, the former Marshland Landfill is already capped and subject to maintenance requirements. It is also consistent with the Title 27 CCR § 21170 regulations since a deed notice was recorded in the chain of title of the former Marshland Landfill sufficient to meet the ROD's institutional control requirement.

EPA has determined that the following governmental controls provided through Title 14 and Title 27 regulations, which are being implemented by the City of San Jose LEA, are as protective of the cap as the proprietary control that would be met through deed restrictions:

- Title 14 CCR § 18083, which requires the LEA to inspect closed landfills quarterly until no potential threat exists to public health and safety or the environment.
- Title 27 CCR §§ 21100 *et seq.* , which are triggered when new post-closure activities take place at a closed landfill site that may jeopardize the integrity of the previously closed disposal site or pose a potential threat to public health and safety or the environment.
- Title 27 CCR § 21100 , which requires that all construction at LEA-regulated closed landfill sites be designed and maintained in a manner that protects public health and prevents public contact with the waste.
- Title 27 CCR § 21190 , which requires that all post-closure land uses at former landfills must be designed and maintained to protect public health and safety and must maintain cap integrity. The LEA has review and approval authority over all structures on top of the waste and within 1,000 feet of the disposal area.
- Title 27 CCR § 21200, which requires landfill owners to notify prospective owners of the applicable standards, conditions of closure and compliance agreements and to notify the LEA within 30 days of any property transfer.
- Title 27 CCR § 21170 , which requires landfill owners to file a detailed description of the site (including a map, boundaries of fill area, closure date, location of closure and post-closure plans, and a statement indicating how future site use is restricted) with the County Recorder and the LEA.

EPA has coordinated closely with the supporting state agency, the California DTSC regarding implementation of deed restrictions. The DTSC has concurred with EPA that a deed restriction (i.e. land use covenant) is not needed for the Marshland Landfill because the existing state regulatory mechanisms provide adequate controls.

Sainte Claire Landfill

This ESD eliminates the OU2 ROD requirement for placement of a deed restriction on the Sainte Claire Landfill property. In 2011, the owner of the Sainte Claire landfill performed additional sampling work under EPA oversight sufficient to show that the former Sainte Claire landfill need not be deed restricted to prevent potential exposure to asbestos containing waste. Of the 28 samples analyzed, only one had over the one percent concentration action level. All of the other concentrations were less than 0.25 percent or none detected, which means the 0.29 percent average for all samples is substantially less than the one percent action level established for the Site. EPA coordinated its review of this sampling effort and the analytical results closely with the supporting state agency, the California DTSC. The DTSC has concurred with EPA that based on sampling results a deed restriction (i.e. land use covenant) is not needed for the Sainte Claire Landfill.

DECLARATION

The selected remedy, as modified by this ESD, is protective of human health and the environment. The selected remedy, as modified by this ESD, attains the Federal and State requirements that are legally applicable or relevant and appropriate under the circumstances of the release, and is cost effective. This remedy, as modified by this ESD, utilizes permanent solutions and alternative treatment technologies to the maximum extent practicable; however, because treatment of the principal threats of the Site was not found to be practicable, this remedy, as modified by this ESD, does not satisfy the statutory preference for treatment as a principal element. After consideration of the changes made to the selected remedy by this ESD, the remedy for the Overall Site OU2 of the South Bay Asbestos Superfund Site meets the remedy selection standards of CERCLA Section 121, 42 U.S.C. § 9621, and the National Contingency Plan, 40 C.F.R. Part 300.

Approved by:



Kathleen Salyer, Assistant Director
Superfund Division
California Site Cleanup Branch
U.S. EPA Region IX

9/28/11
Date

APPENDIX A
SUPPORTING DOCUMENTS

The ESD and Supporting Documents listed here will become part of the South Bay Asbestos Superfund Site Administrative Record.

Brown and Caldwell. 2004. *Five Year Cap Inspection Report, Legacy Tech Park, San Jose, California*. March 19.

City of San Jose, California. 2000. *Local Enforcement Agency Closed Disposal Site Inspection Quarterly Reports*. March 2000 – March 2005.

City of San Jose, California. 2005 through 2010. *Local Enforcement Agency, Closed Disposal Site Inspection Quarterly Reports*. April 2005 through May 2010.

Crawford Consulting Inc. 2005. *Letter Report, Soil Management Plan Update for Legacy America Center, San Jose, California*. August 31, 2005.

Crawford Consulting Inc. 2007. *Letter Report, Title 27 Landfill Closure Recording Statement, Highway 237 Landfill, San Jose, California*. September 10.

_____. 2010. *Letter Report, 2010 Soil Management Plan Update for Legacy America Center, San Jose, California*. June 24. Environmental Risk Specialties (ERS). 2011. *Asbestos Sampling Report for Sainte Claire Landfill, Alviso, California*. April.

Lockheed Martin. 2007. *Field Sampling and Quality Assurance Project Plans for South Bay (Alviso) Asbestos Exposure Assessment, San Francisco Bay, California*. August.

Lockheed Martin. 2009. *Asbestos Exposure Assessment using Activity-Based Sampling (August 20-24, 2007) - South Bay Asbestos Superfund Site, Alviso, CA*. March 31.

SCS Engineers. 2010. *Five-Year Cap Inspection Report: Bixby Technology Center, 2100-2190 Gold Street, San Jose, California*. June 7.

United States Environmental Protection Agency (EPA). 1988. *EPA Superfund Record of Decision: South Bay Asbestos Site EPA ID: CAD980894885 OU 01 Alviso, California*. September 29.

_____. 1988. *Remedial Investigation Report, South Bay Asbestos Site, Alviso, CA. Volumes I and II*. December.

_____. 1989. *EPA Superfund Record of Decision: South Bay Asbestos Site EPA ID:CAD980894885 OU 02 Alviso, California*. September 29.

_____. 1991. *EPA Superfund Record of Decision Amendment: South Bay Asbestos Site* EPA ID: CAD980894885 OU 01 Alviso, California. June 26.

_____. 1993. *EPA Superfund Explanation of Significant Differences to the Record of Decision, South Bay Asbestos Site* EPA ID: CAD980894885 OU 02 Alviso, California. October 18.

_____. 1995. *Ambient Airborne Asbestos Levels in Alviso, California*. April 21.

_____. 1998. *EPA Preliminary Close Out Report, South Bay Asbestos Site* EPA ID: CAD980894885 San Jose, California. September 23.

_____. 2000. *EPA Five Year Review Report, South Bay Asbestos Site* EPA ID: CAD980894885 San Jose, California. September 29.

_____. 2005. *Second Five-Year Review Report for South Bay Asbestos Site, San Jose, California*. September 27.

_____. 2007. *Fact Sheet: EPA Will Conduct Additional Asbestos Sampling for South Bay Asbestos Superfund Site*. July.

_____. 2008. *Framework for Investigating Asbestos Contamination at Superfund Sites*. Office of Solid Waste and Emergency Response. OSWER Directive 9200.0-68, September 2008.

_____. 2010. *Asbestos Exposure Assessment and Risk Evaluation Summary Report for South Bay Asbestos Superfund Site, Alviso, CA*. August.

_____. 2010. *Third Five-Year Review Report for South Bay Asbestos Site, San Jose, California*. September 22.

WIX/NSJ Real Estate Limited Partnership. 2004. *Covenant and Agreement for Environmental Restriction (Civil Code section 1471c and Health and Safety Code section 25355.5), Legacy Tech Park, San Jose, Santa Clara County, California*. October 21.

